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ABSTRACT

A preliminary classification of methods used during first-year law courses to develop a sense of professional identification among students is presented. Professors' images of lawyers conveyed to students are described based on faculty comments. In addition, informal student interviews were conducted to determine their awareness of this indoctrination process. Participant observation identified the following types of faculty comments: distinguishing lawyers from non-lawyers and professional from personal opinions, discussion of ethical issues, sensitivity to legal terminology, role of authority, awareness of legal roles and tasks, responsibility for structure and results of the system, ability to argue for any position, ability to write in appropriate legal format, development of presentation skills. Additionally, faculty comments revealed the following images of lawyers: as business person, as technician, as preventor of problems, as problem solver, and as creator of the system. While most students indicated that they were starting to think of themselves as lawyers, they were generally not aware of faculty comments that conveyed an image of what lawyers are or what they do. (SW)

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Methods in Professional Training: Indoctrination from Step One

Marjorie Powell

American Educational Research Association Annual Meeting

April, 1983

This participant observation of first-year law courses identified types of faculty comments which develop a professional identity: distinguishing lawyers from non-lawyers and professional from personal opinions, discussion of ethical issues, awareness of legal roles and tasks, responsibility for structure and results of system. Professors' images of lawyers are described based on the faculty comments.

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Professional schools serve an important role in conveying technical knowledge and skills and in developing a sense of professional identification. Various methods are used to develop professional identification, which this paper explores. The importance of the study lies in the need for efficient professional training, including a sense of professional identification, as demographic factors decrease the numbers of individuals applying for training in professional schools and as the costs of such training increase.

Some professions, including law, develop a strong sense of professional identification as part of their initiation process. This sense of professional identification is essential when professionals are expected to maintain ethical behavior in a variety of situations and when monitoring of the professional behavior of large numbers of members of the profession is limited or non-existent. This paper devlops an initial classification of methods used during first-year law courses to develop a sense of professional identification among students aspiring to become lawyers. In this initial effort, professors' images of lawyers conveyed to students are described; no effort is made to identify the frequency with which any one professor used any one method. The study also documents limited student awareness of this indoctrination process.

Methodology

This study, conducted by a participant observer, is based on observations of the instructional behaviors of several professors of first-year courses, Torts, Property, Contracts, Criminal Law, Civil Procedure, Constitutional Law, supplemented by interviews with other students. The participant observer is researcher with training in conducting ethnographic observations of classrooms as well as using observation systems, with experience in studying teaching.

Data Sources: Data were collected from observations of the first year course in one law school (observations of almost all class sessions for all courses for two semesters), audio recordings of class sessions and informal student interviews. The faculty observed included visiting professors, so the data represent the behaviors of faculty associated with five law schools. However, the preliminary nature of the data and the resulting classification system should be recognized.

Observation: Professors' comments which were not clearly part of the course subject-matter content were recorded verbatim. The audio recording provided a check on the accuracy of the notes. Comments which referred to the profession, the role and responsibility of members of the profession or the operation of the legal system, were transferred to cards which were then reviewed to develop an initial set of categories. Next, the participant observer assigned each of the cards to one of those categories, revising the categories as necessary to incorporate all of the faculty comments.

Interview: Interviews were conducted wih a sample of students, selected to represent a range of ages, prior training and prior professional identity (i.e., some students attending law school

directly from an undergraduate program and other students enrolled in law school while continuing other professional careers).

Results

The categories of methods used to develop a professional identification are presented in Table 1. The categories, representing a first attempt to identify methods used by faculty, need to be tested by application to the instructional behaviors of other law school faculty. Some of the categories lend themselves to generalization to other professional training and might be tested by use in observing the instructional behavior of faculty in other professional schools.

Categories of methods used to develop professional identification first-year law school courses

* distinctions between lawyers and everyone else
* distinction between professional and personal opinions
* discussion of ethical issues
* sensitivity to legal terminology
* role of authority
* ability to argue for any position
* awareness of roles and tasks within legal system
  - how the system works
  - lawyers' rewards
  - lawyers' tasks and responsibilities
* responsibility for structure and results of the system
* ability to write in appropriate legal format
* development of presentation skills
* awareness of career patterns and major law firms

Table 1

Discussion

After a brief review of student awareness, the categories listed in table 1 are discussed and illustrated with quotes selected to represent the types of statements included within each category. Images which professors convey of lawyers and the tasks which they perform are then described, based on faculty comments which serve to inculcate a sense of professional identification.

Student awareness: Students varied considerably in their awareness of professors' actions designed to develop a sense of professional identification. While most students indicated that they were starting to think of themselves as lawyers, they were generally not aware of faculty comments which conveyed an image of what lawyers are or what they do. Students verbalized as great a sense of what it is like to work as a lawyer from their experiences with the procedures for securing summer work as from faculty in-class comments. Students with more educational experience were more aware of professors' actions, but such awareness was not clearly associated with students' prior completion of another professional program or with training as an educator.

Methods to develop a sense of professional identification

1. Distinctions between lawyers and everyone else: Faculty periodically made comments distinguishing lawyers from everybody else, building a sense of separateness. "We as legal sophisticates know..." "How would you explain it to a layman?"

Some of these comments presented elitist views of lawyers in general and put-downs of non-lawyers. Other comments were meant more specifically to inculcate an elitist view of self. "In law school the law is not something you can look up because that's not something for

which you need legal training. That's not why you were pre-selected by the LSAT's."

2. Distinction between professional and personal opinions: Some faculty comments emphasized the distinction between a personal and a professional opinion, indicting to students the need to develop professional opinions and to state those opinions confidently. "What do you think? Excuse me. What is your professional opinion?"

3. Discussion of ethical issues: Comments on ethical issues facing the profession occurred periodically in each course. For example, "Everyone, even the government, deserves representation." Some of the comments focused on the failures in the system of professional ethics. "Professional behavior is not always observed, especially among lawyers. It's disgraceful and shouldn't occur." Comments were often intertwined with comments about the operation of the legal system; these comments sometimes raised ethical issues indirectly. "The lawyer as usual gets his share."

4. Sensitivity to legal terminology: Occassionally professors discussed legal terminology, indicating the distinction between the common and the legal meaning. "Remember, when you are a lawyer and you use that word, you are telling me...." One professor consciously used legal terms for actions commonly described by other words, for example, using the expression "change of venue," meaning a change of court location, for the process of selecting another student to answer the professor's next series of questions.

5. Role of Authority: Comments dealing with the role of authority within the legal system, the proper posture of lawyers relative to that authority and methods of using authority to achieve an end were common in the first-year courses. Some of the comments focused on the basic structure of the law and its reliance on past authority. For

example, professors would ask students who or what case they could cite in support of a particular position. Other comments related to the process of locating and citing prior authority, such as directions to use a particular source for detailed information or references to cases with the citation information necessary to locate them. Still other comments focused on the importance of citing precedents, "The mechanics of locating citations is a question important to lawyers."

Failures in the system of citing prior cases, incorrect statements of rules derived from prior cases or mistakes in relating the facts of a case to the legal rules were the subject of some faculty comments. "You need to keep judges honest by occassionally looking up the citations in cases that you read."

The relative weight of different authorities were noted in various faculty comments. The law is a practical profession which accords greatest authority to cases and court decisions. Academic writing has little authority within the legal system; it does not bind a judge to rule in a particular way in an individual case. Several professors made this point, "That's the difference between the court and me (professor). The court has authority, I don't."

6. Ability to argue for any position: Many comments by faculty related to the ability to argue for any position. "Can you argue for the other side?" "If you were the plaintiff, what argument would you use?" Another method involveed asking the student to present the strongest argument for one side of a controversy and then to make the strongest possible counter-argument. "Suppose you are working for the plaintiff, and need to anticipate. Can you think of an argument that the defendant will use?"

7. Awareness of roles and tasks within legal system: Within this large category of comments are several subcategories: awareness of how

the system works; the lawyer's rewards and tasks and responsibilities of lawyers.

How the system works - Many faculty comments pointed out aspects of the operation of the legal system. "You always have an opponent, the lawyer for the other side." "In the U.S. as a general rule, the plaintiff is not entitled to full costs, and specifically not entitled to lawyers' fees." Some of these comments were less than complimentary. "Jury decisions, like sausages, go down easier if you don't watch what goes into them."

Lawyers' rewards - Several comments stressed rewards which lawyers receive, monetary as well as other types of rewards. "Pain and suffering, that's a euphemism for our cut." "One reason we become lawyers is so that we can impose our values on others."

Lawyers' tasks and responsibilities - Many comments related to lawyers' tasks and the competent completion of those tasks. Among these, many comments dealt with client relations. "His lawyer ought to force him to make up his mind. You ought to force the client to make up his mind." Others dealt with presentation of information to the court in writing and orally, "You are the lawyer, arguing before the court."

A few comments identified lawyer-like tasks not taught or discussed in law school. "We spend little time in law school giving narratives, but it's one half of what lawyers do....and it's difficult to tell a story (the facts of the case)."

Responsibility for structure and results of legal system: Many faculty comments related to the responsibility of individual lawyers and the legal profession for the structure and operation of the legal system. Some comments related to specific roles within the system.

"You have just been put on the bench." and the ubiquitous, "Do you think this case is rightly decided?" Others dealt with the operation of the judicial system and its relationships to other branches of the government. "I' passing along to you a tradition. There are limits on judges. They can't act like legislators."

Periodically, professors refered to the lawyer's role in making policy decisions for society. "One reason for studying criminal law is that in your role as educated lawyers you will be leaders of society." "When you are a legislator, and many of you will work in or with the legislature,..." A few of the comments dealt with specific methods of changing the law. "In public interest suits, the organizations usually have to seek plaintiffs."

Ability to write in appropriate legal format: A few faculty comments dealt with legal writing. Some comments noted the existence of legal jargon, "Lawyers like to use two, three or four terms whenever possible, even when they mean the same thing."; others discussed the role of legal jargon in communication between lawyers and still others addressed the need for clarity and simplicity in legal writing.

Development of presentation skills: One major student assignment, the simulation of oral arguments in a courtroom, with students arguing assigned positions within specified time limits after submitting required preliminary documentation (a brief), was the clearest example of the development of presentation skills. However, faculty comments and questions also focused on this set of skills, through the discussion of specific strategies for presenting information in any adversarial setting. "When you are negotiating, you are going to take an extreme position, make statements which everyone knows are not

totally true."

Awareness of career patterns and major law firms: Many faculty comments related to the role of lawyers within law firms. "Discovery, that's what first and second year associates get assigned to do." "Don't worry about spelling. Lawyers have secretaries." Still other comments related to lawyers as persons. "Virtually all the first rate lawyers I know mumble. It's the lawyer's version of passive aggression." "This is legal cocktail party knowledge." References to well known, prestigious firms in the field of law being studied occurred in some courses.

Professors' images of lawyers

A review of the frequency and focus of comments made by the several professors indicates differences in their views of lawyers and the lawyer-like roles which they envision their students filling. Several images of lawyers can be identified from faculty comments; those images, presented in Table 2, are discussed and illustrated with faculty comments.

Faculty images of lawyers' roles

* lawyer as business person
* lawyer as technician
* lawyer as preventor of problems
* lawyer as problem solver
* lawyer as creator of the system

Table 2

Lawyer as business person: One role envisioned for lawyers,

expressed clearly and consistently by one professor and echoed occasionally by other professors, is the lawyer as business person. This conception focuses on the processes whereby lawyers obtain clients, charge clients, and earn a return on their investment in legal training. Periodically the professor indicated that a particular area of conflict was one which produced a large number of clients. "(That injury) still occurs frequently today, and is a good source of clients." In other instances, the professor pointed out that such suits were lucrative for the lawyer, since the settlements were apt to be large. The "deep pocket" theory of identification of persons to be sued was first introduced in this course and discussed occassionally throughout the semester.

Comments about the effects of legal charges on the costs of system operations were also common in this course; the professor often equated transaction costs with legal fees. He also referred, jokingly, to the lawyer's need to use multi-syllable words to justify the size of fees charged. Students learned that law firms typically specialize, focusing their efforts on legal services for plaintiffs or defendents. Differences in behavior, typical lines of argument, and litigation strategies employed by lawyers associated with plaintiffs and defendants were noted. In discussing some cases, the professor identified the impact of the court's decision in increasing the frequency of suits or increasing or decreasing the size of damage awards.

Lawyer as technican: One professor consistently and several professors occassionally presented an image of the lawyer as technician. The role of the lawyer is to accomplish the client's goals by correctly completing legal forms, using language in a will

or contract that the court will interpret to mean what the client intended to have the document accomplish; accurately completing a title search and including the correct information in court documents. This image involves a stress on correct knowledge as well as reference to the appropriate legal rules and prior court decisions to insure that the task facing the lawyer is accomplished accurately without creating possible future problems. For example, "A competent draftsman would use this term." "The term ....originated to solve another problem but now is used in standardized forms and interpreted to mean....".

Lawyer as preventor of problems: Two professors viewed the lawyer's role as the preventor of problems. One method of problem prevention is careful and thorough work with the client. After determining the client's wishes, the lawyer advises the client about possible problems and completes the legal work in such a way as to prevent as many of those problems as possible. Often, the client is a corporation or a business person and the problems to be avoided are those which occur in business settings. For example, a professor asked, "What could you advise you client to do to avoid (a specific commercial problem)?" "How might you have advised the defendant, to achieve his goal within the constraints of the legal rules?"

Lawyer as problem solver: Several professors view the lawyer as a solver of problems. This image is similar to the image of the lawyer as preventor of problems: the ability to identify solutions to existing problems is related to the ability to identify ways to avoid problems. However, the image of lawyer as problem solver is more universal, underlying much of legal education. All professors

asked questions about how students would solve, or the client's lawyer might have solved, a problem. These questions were designed to elicit discussion of specific concepts being studied or to encourage students to apply concepts already studied. In either case, the pervasive image of the lawyer as the person who is aware of several solutions and has criteria for selecting among solutions is clearly conveyed in faculty comments and questions.

In some instances, the lawyer's role was to solve a problem by identifying a solution and making the appropriate arguments to convince a decision maker to select that solution. Thus, professors asked, "What would you say to the judge?" or "What would you argue to the jury?" In an alternative expansion of the lawyer as problem solver, one professor frequently asked students to be the judge. "Do you think that argument would sway you if you were the judge?"

Lawyer as creator of the system: An even more expanded image of the lawyer as problem solver is the image of lawyer as creator of the legal, social and political systems. This image appeared, with varying frequency, in the comments of all the professors. Students were presented repeatedly with the image of the lawyer, and specifically with the image of themselves as lawyers, responsible for the structure of the system, and for thinking about whether the system operates in an appropriate manner. Professors asked whether students thought the rule was fair to the parties involved in the law suit. Students were asked to assess the effects on society as a whole of changes in legal rules, i.e., changes in manufacturers' liability for injuries resulting from their products. Discussions of the systemic effects of legal rules, actions of the courts and actions of the legislature were held in all of the first year

courses.

Students were also reminded that they would become the persons in the position to make changes in the law, through the courts or the legislature. Comments about, "What would you do if you were writing the bill?" or, "When you are in congress..." occurred periodically throughout the first-year courses.

Throughout the first-year courses, faculty members communicated their images of lawyers and encouraged students to develop a sense of professional identification. Students were frequently reminded that they were members of the legal profession, and were presented with images of their roles and responsibilities as lawyers. Several methods were used to communicate a sense of professional identity. Faculty members differed in the methods which they used and in the images of lawyers which they conveyed, but they were consistent in communicating a sense of belonging to a professional group and assuming the rewards and responsibilities of that group.